

MINUTES MEETING OF THE BOARD OF EXAMINERS

January 11, 2011

The Board of Examiners met on January 11, 2011, in the Annex on the second floor of the Capitol Building, 101 N. Carson St., Carson City, Nevada, at 10:00 a.m. Present were:

Members:

Governor Brian Sandoval
Attorney General Catherine Cortez Masto
Secretary of State Ross Miller
Clerk Andrew K. Clinger

Others Present:

Melanie Young, Department of Public Safety, State Fire Marshal
Dave Jones, Department of Administration, Purchasing
Susan Hohn, Department of Business and Industry
Bill Maier, Department of Business and Industry, Directors Office
Todd Rich, Department of Business and Industry, Directors Office
Jason Holm, Department of Health and Human Services, Welfare and Supportive Services
Laura Smolyansky, Department of Information Technology
Carol Sweeney, Department of Information Technology
Susan Injayan, Department of Business and Industry, Financial Institution
Chris Schneider, Department of Business and Industry, Financial Institution
Charles Duarte, Department of Health and Human Services, Health Care Financing and Policy
Amy Crowe, Attorney General's Office
Bruce Breslow, Department of Motor Vehicles
Deb Cook, Department of Motor Vehicles
Mark Froese, Department of Motor Vehicles
Stu Bailey, HP Enterprise
Lori Myer, Department of Business and Industry, Industrial Relations
Hurlee Thoreson, Department of Business and Industry, Industrial Relations
Dorrie Kingsley, Department of Health and Human Services, Health Care Financing and Policy
Jane Splean, Department of Education
Tammy Moffitt, Department of Employment Training and Rehabilitation
Josh Hicks, Brownstein, Hyatt, Farber, Schreck
Jennifer Bauer, Department of Public Safety
Mike Willden, Department of Health and Human Services
Mary Woods, Department of Health and Human Services
Tracy Pearl, Department of Public Safety, Office of Traffic Safety
Rebecca Salazar, Department of Administration, Victims of Crime
Mohammed Igram, Claimant for Victims of Crime
Nancy Bowman, Attorney General's Office
Gregg Cox, Department of Corrections
Jeff Mohlenkamp, Department of Corrections

Ronald Corda, Department of Public Safety
Brenda Ford, Department of Employment Training and Rehabilitation
Shannon Berry, Department of Administration, Purchasing
Kimberlee Tarter, Department of Administration, Purchasing
Peggy Martin, Department of Health and Human Services, Health Care Financing and Policy
Mel Rosenburg, Department of Health and Human Services, Health Care Financing and Policy
Darrell Faircloth, Attorney General's Office
Mark Winebarger, Treasurers' Office
Katie Armstrong, Attorney General's Office
Jeff Menicucci, Attorney General's Office
Clark Leslie, Attorney General's Office
Tami Nash, Department of Employment Training and Rehabilitation
Cindy Jones, Department of Employment Training and Rehabilitation
Greg Weyland, Department of Education

PRESS

Cy Ryan, Las Vegas Sun
Dave Schwartz, Las Vegas Sun
Sean Whaley, Nevada News Bureau
Andrew Doughman, Nevada News Bureau
Sandy Cherub, Associated Press
Ed Vogel, Las Vegas Review Journal
Geoff Dornan, Nevada Appeal

***1. APPROVAL OF THE DECEMBER 14, 2010 BOARD OF EXAMINERS' MEETING MINUTES**

Clerk's Recommendation: I recommend approval.

Motion By: Secretary of State **Seconded By:** Attorney General **Vote:** 2-0

Comments:

Governor: Good Morning ladies and gentleman, I would like to call this meeting of the Board of Examiners to order. All members are present. We will go straight to the agenda. The first item on the agenda is the approval of the December 14, 2010 Board of Examiners meeting minutes. Have all the members had an opportunity to read the minutes?

Attorney General: Yes, I would move for approval.

Secretary of State: Seconded.

Governor: It has been motioned by the Attorney General and second by the Secretary of State. All those in favor of the motion say aye. The motion passes.

****Please Note - The Governor did not attend the December meeting of the Board of Examiners in which case he was recused from approving the minutes.****

***2. REQUEST FOR FURLOUGH EXCEPTIONS**

A. Department of Corrections – Multiple Budget Accounts - \$938,069.00

The Department of Corrections requests exceptions for the months of January 2011 through March 31, 2011, for multiple positions necessary for public safety at a cost of approximately \$938,069 (the unobligated balance in the furlough account is \$1,018,755). This request includes all Correctional Officer and Senior Correctional Officer positions.

Clerk's Recommendation: I recommend approval.

Motion By: Secretary of State **Seconded By:** Attorney General **Vote:** 3-0

Comments:

Governor: We move to item two on the agenda which is the request for furlough exceptions.

Clerk: Thank you Governor, for the Board Members item 2A on the agenda this morning is a request from the Department of Corrections. The request before the board this morning is for exemptions from furloughs for Correctional Officers for the months of January through March. Senate Bill 433 from the last legislative session section 8 appropriated four million dollars for exceptions to furloughs the balance in that account is \$1,018,755. If the board approves the request today for the three months of furlough that would use \$938,069 of the \$1,018,755.

Governor: Thank you Mr. Clinger, is Mr. Cox present? Good Morning Mr. Cox. Do you have a statement that you would like to make on behalf of the Prisons in regards to this request?

Gregg Cox: Yes Sir, we have analyzed resent data involving when we actually took furloughs in July to October and what we found was no increase in incidents as a result of furloughs taken by our staff at that time. We feel like we can manage our operations safely and securely. For the remainder of January we need to continue with the exemptions and beginning in February we believe we can furlough our staff at that time.

Governor: Mr. Cox in our packet there is a letter from the State of Nevada, Department of Corrections dated December 16, 2010 which was authored by your predecessor. There are some statements in there with regard to the fact the department is inadequately staffed to meet safety and security needs without incurring substantial levels of overtime. So if we were to approve your request as modified would that result in an increase in overtime?

Gregg Cox: Yes, it would be minimal compared to the cost of not furloughing. We are looking at about anywhere from thirty to thirty-five hundred dollar increase in pay periods in overtime.

Governor: So what would be your estimate net in overtime?

Gregg Cox: The net savings per month would be about \$215,000.

Governor: Also within that same memorandum there is a statement with regards to an increase in overtime costs and also increases the risk of injury to inmates and staff. The Department strongly recommends this increased risk be avoided. If we were to approve your request as modified would there be a risk of injury to inmates and staff?

Gregg Cox: What I have to say to that Governor is that we will continue to manage our operation in a safe and secure manner. We will be proactive. Corrections is basically a reactive business, we will be doing this with scheduling, different types of controls and movement and quite frankly some of our staff needs some efficiencies on how run and operate. I believe that we can do it safely and securely, but I believe the data supports that we will be successful.

Governor: Questions from any members of the Board?

Secretary of State: I'll move for approval.

Governor: Mr. Secretary are you moving for approval as modified by the Director of Corrections?

Secretary of State: Yes, Governor.

Attorney General: I'll second the motion.

Governor: We have a motion and a second to approve the furlough request for the Department of Corrections as modified by the Director. And just for my clarification Mr. Cox that you would not seek an exemption from the furloughs for February March 2011?

Gregg Cox: That is correct.

Governor: Any discussion on the motion? All those in favor of the motion please say aye. The motion passes unanimously.

***3. REQUEST FOR HIGHWAY FUND ALLOCATION FROM THE INTERIM FINANCE COMMITTEE (IFC) CONTINGENCY FUND**

A. Department of Motor Vehicles – Director’s Office - \$396,890.00

The Department of Motor Vehicles, Director’s Office, is requesting an allocation of Highway Funds from the Interim Finance Committee Contingency Fund in the amount of \$396,890 due to the projected shortfall of commission payments associated with kiosk transactions.

Clerk’s Recommendation: I recommend approval.

Motion By: Secretary of State

Seconded By: Attorney General

Vote: 3-0

Comments:

Governor: Item number three on the agenda is a request for highway fund allocation from the Interim Finance Committee Contingency Fund, Mr. Clinger.

Clerk: Thank you, Governor. Item 3A is a request from the Department of Motor Vehicles, Director’s Office. This allocation will cover a projected shortfall in commission costs for the kiosks. The traffic to the kiosk continues to increase and there are commissions associated with that were above what were projected in their budget originally. The \$396,890 will cover the projected shortfall.

Governor: Thank you, is Mr. Breslow present?

Bruce Breslow: Good Morning, Governor and members of the BOE, I have been on the job two hours and six minutes and I here asking for \$400,000. The agency did project this money and the legislature took the money away from the agency. This money will only cover us until about April 1st. We have asked for a supplemental financing with the budget which this would reduce the \$630,036, but that whole amount was planned by the agency. We used \$425,000 of this year’s funds that were budgeted in 2010. The key is that there is a bill that we hope to get through that will make the kiosks self-funded if the legislature approves it.

Governor: A couple of questions Mr. Breslow, this is actually good news that the citizens of Nevada are taking advantage of the kiosks?

Bruce Breslow: This is really good news it will be even better news when we can move the kiosks out from our buildings and into things like the University. Then we will have a lot more people using the kiosks.

Governor: Do you have an example of what a typical transaction would be at the kiosks?

Bruce Breslow: I can tell you my experience with the kiosks, but I have staff that has actually worked for the DMV for more than two hours so I will ask them to come up and explain it to you.

Deb Cook: We can do history transactions and we can registration renewals. And we can do insurance verification transactions. We are looking at expanding that further.

Governor: Expanding the type of transactions someone can do while at the kiosks?

Deb Cook: Correct, like drivers license renewals.

Mark Froese: Some of the transactions that we would entertain would be renewal of driver's license and ID cards on the kiosks. Those are the immediate ones that we would implement once the contract is established.

Governor: What is preventing us from putting these kiosks in a public library and as the director said at the University?

Mark Froese: It is my understanding that it will be the funding today.

Governor: Who are we making these commission payments to?

Mark Froese: The vendor is ITI (Intellectual Technologies Incorporated).

Governor: Are they getting a percentage

Mark Froese: No they are reinstated by preset fee amount per transaction. For example the registration renewal transaction is \$4.99, the driver's license is \$1.00 and I am not sure what the insurance amount is.

Governor: This \$396,890 is this the amount that is expected to be collected?

Deb Cook: The \$396,890 is to cover February and March until we can get a supplemental so that is two months worth of transaction fees.

Governor: So what are they collecting on an annual basis?

Deb Cook: I believe this fiscal year we are projecting to spend \$2.2 million.

Governor: Are there any questions from any of the members of the Board? I will accept a motion for item 3A on the agenda.

Secretary of State: I'll move to approve.

Attorney General: I'll second the motion.

Governor: Motion by Secretary of State and second by the Attorney General to approve item 3A on the agenda. Is there a discussion on the motion? Hearing none all those favoring the motion please say aye. The motion passes.

***4. REQUEST FOR GENERAL FUND ALLOCATION FROM THE INTERIM FINANCE COMMITTEE (IFC) CONTINGENCY FUND**

Pursuant to NRS 353.268, an agency or officer shall submit a request to the State Board of Examiners for an allocation by the Interim Finance Committee from the Contingency Fund.

A. Department of Business and Industry – Director's Office - \$19,668.00

Pursuant to NRS 353.268, the Department of Business and Industry is requesting an allocation of \$19,668 from the IFC Contingency Fund to support the relocation of the Director's Office.

Clerk's Recommendation: I recommend approval.

Motion By: Attorney General

Seconded By: Secretary of State

Vote: 3-0

Comments:

Governor: We move on to item number 4 on the agenda the request for general fund allocation from the Interim Finance Committee Contingency Fund, Mr. Clerk.

Clerk: Thank you Governor, this request is for the relocation of the B&I Director's Office. I did hand out today additional information for the Board members that was not included in your packet. The second page of that handout gives you a break down of the relocation costs for the B&I Director's Office. The first page provides where the funds will come from. Essentially the B&I Director's Office is funded from other divisions in the department, so the \$19,668 represents the General Fund portion of that cost allocation. The total cost of the move is \$309,000. This move Governor and Board Members is predicated on some of the moves that are anticipated to happen in the Executive Budget. What the Department of Business and Industry is doing is consolidating IT, Accounting, Personnel functions, and so the Director's Office is going from 11 FTE positions to 39. So the space in the Bryant building will not accommodate them so they need to move.

Governor: So we are consolidating but we need to expand to a bigger space to consolidate?

Clerk: Going from 11 FTE to 39 FTE those employees will come from other divisions within the department. So while the Directors Office space will increase the other division will decrease.

Governor: So will we save money on the back end.

Clerk: We should and I don't want to get into specifics. I would ask that a representative from B&I come up and explain that for you.

Todd Rich: As Mr. Clinger said we putting together centralization plan to increase our fiscal and administrative functions. We anticipate that we will be able to gain some long term savings through the personnel side. It will be about \$97,000 for the biennium. And this is a onetime shot to get us into a larger space where we can put all of our fiscal folks together. Right now we are decentralized and we feel that we would be more efficient long term.

Governor: So you are saying for a work product together at the end of the day the staff will pulling together because of the centralization?

Todd Rich: That is our goal and we can do that if we have everyone under that same roof doing the same functions. We are going to be more efficient rather than having 14 different divisions doing the same functions.

Governor: Are there any questions from any of the members of the board?

Clerk: Governor, just one more comment for the record. The total cost of the move is \$309,727 with \$19,668 coming from the Contingency Fund. To speak to your question on the ongoing costs for what is built into your Executive Budget regarding the difference in rent. The first year of the biennium based on the move for the Directors office the additional costs will be \$1,113 in the second year it is a savings of \$1,622.

Governor: Thank you, so no questions from the other board members the chair would entertain a motion for item 4A of the agenda.

Attorney General: Move to approve.

Secretary of State: Second.

Governor: It has been motioned by the Attorney General and second by the Secretary of State. Is there a discussion on the motion? Hearing none all those in favor of the motion please say aye. The motion passes.

***5. STATE VEHICLE PURCHASE**

Pursuant to NRS 334.010, no automobile may be purchased by any department, office, bureau, officer or employee of the State without prior written consent of the State Board of Examiners.

AGENCY NAME	# OF VEHICLES	NOT TO EXCEED:
Department of Business and Industry – Occupational Safety and Health Enforcement	1	\$23,992

Total:		\$23,992
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Clerk's Recommendation: I recommend approval.

Motion By: Attorney General Seconded By: Secretary of State Vote: 3-0

Comments:

Governor: The next time on the agenda is agenda item 5 state vehicle purchase.

Clerk: Thank you Governor, pursuant to NRS 334.010 no automobile may be purchased by an agency unless approved by the State Board of Examiners. On the agenda today we have one request for a vehicle from the Department of Business and Industry, Occupational Safety and Health Enforcement. This request is to replace a vehicle that was involved in an accident and was totaled. Governor they have been without that vehicle since October 11. A portion of the vehicle is being paid for using insurance funds \$11,750 will be covered by insurance funds. They are looking at using an alternative fuel vehicle.

Governor: Thank you, so was this our fault or the states fault?

Clerk: I would have to ask representatives from the department to come up.

Governor: That isn't relevant. So the \$11,750 was received from the insurance proceeds will offset the \$23,992?

Clerk: That is correct.

Governor: So does the Board need to approve the \$23,992 plus the \$11,750?

Clerk: Governor, the boards' approval is just for the purchase of the vehicle so it would be the \$23,992.

Governor: Just one question with regards to the request for my own clarification. It says does the request for the vehicle comply with Smart Way or Smart Way Elite requirements? Do you know what those are?

Clerk: I do not.

Governor: This is just for my education.

B&I Representative: It is my understanding that it is the cleanest, most fuel-efficient vehicles available.

Governor: Are there any questions from any of the board members on this item?

Attorney General: Move for approval.

Secretary of State: Second.

Governor: Motioned by the Attorney General and second by the Secretary of State. Is there any discussion on the motion? Hearing none all those in favor please say aye. The motion passes.

***6. VICTIMS OF CRIME PROGRAM (VOCP) APPEAL**

Pursuant to NRS 217.117 Section 3, the Board may review the case and either render a decision within 15 days of the Board meeting; or, if they would like to hear the case with the appellant present, they can schedule the case to be heard at their next meeting.

A. Mohammed Igram

Mr. Igram is appealing the denial of his application for VOCP assistance due to contributory conduct.

Mohammad Igram appeals the denial of his application for VOCP assistance due to contributory conduct. Mr. Igram submitted his application to the VOCP on July 6, 2010 for injuries he received on June 26, 2010 when he was involved in an altercation inside a nightclub. His application was denied because the police report indicates Mr. Igram participated in the fight that led to his injuries. The police report and additional documentation received from the investigating officer indicate Mr. Igram spit on a patron of the nightclub, which led to a physical altercation. The officer further indicates Mr. Igram was uncooperative during the investigation. Mr. Igram insists that he did not spit on the patron and the assault was unprovoked.

Clerk's Recommendation: It is recommended that Mr. Igram's appeal be denied.

Motion By: Secretary of State

Seconded By: Attorney General

Vote: 3-0

Comments:

Governor: The next item on the agenda is number 6 Victims of Crime Program (VOCP) Appeal.

Clerk: Thank you Governor, before the Board this morning is a Victims of Crime appeal for Mr. Mohammed Igram. Mr. Igram is appealing the denial of his application for assistance. Mr. Igram's application was denied due to contributory conduct. And I believe we have representatives in Las Vegas if the board has questions.

Governor: I have reviewed the file. Is Mr. Igram present?

Mohammed Igram: Yes.

Governor: Mr. Igram I would like to give you a brief opportunity to state your position and grounds for your appeal. So if you will proceed.

Mohammed Igram: The police report states only what happened with the altercation. Prior to the altercation the gentleman that struck me pretty much accosted one of my female friends that was with us. I asked him nicely please don't touch her like that. She is not with you keep your hands off of her. He started to come at me verbally and I said to the security staff that this guy is

going to cause a problem. So I walk away and come back 15 minutes later, my friends are still there. He then starts with the comments and wants to start a fight. I go to talk to one of the security guys his friends come up and say everything is fine. I said your friend clearly wants to start a fight. When I turned to the security guard the guy struck me. I didn't see it coming, the police report says that I spit on him and hit him which I did not do. The police report only goes by what each party says and he made those remarks to the police to avoid arrest. The police report does state that I was uncooperative, my eye was completely closed. I do have fractures around my eye. I did answer all of their questions and I did give them my part of the report. The gentleman that struck me told the police that I hit him to avoid arrest, clearly. If I was able to acquire the video it would show that I had no part in the altercation. I did not provoke the guy at all. I was trying to get the staff to take the guy out so there wouldn't be any problems. I have lived here 20 years and have never had an issue like this ever happen, never been in a fight and I have never been arrested. I had a bunch of my close friends that all wrote character witness statements that are in that packet, I am not sure if you have had a chance to read those, but I am just not that type of person.

Governor: Mr. Igram we have reviewed all of your documents. Is there anything else that you wanted to bring to the Board attention before we asked a few questions?

Mohammed Igram: I did apply to the VOC for benefits. I do not have insurance at this time. I said that I would repay the fees that would cover my surgery back to them and it has still been denied to this point.

Governor: I have a couple of questions. So first you deny that you spit on Mr. Mitchell who is the individual that hit you?

Mohammed Igram: Yes.

Governor: And you also deny the statement by the police that you were not cooperating with regards to their investigations?

Mohammed Igram: I did answer all of their questions, I was very upset and I was bleeding. My eye is completely swelled shut and I have fractures around my eye.

Governor: I understand that part, I guess I am just asking for a straight answer are you saying you were or were not cooperative?

Mohammed Igram: They say that I was not, but I don't believe that.

Governor: Ok, also as part of your statement you said that the punch in this whole incident occurred in the presence of the bouncer, is that correct?

Mohammed Igram: He was there, yes and they immediately grabbed him, but the gentleman that owned the club (Robert Fry) is a very good friend of mine.

Governor: That leads me to another question; I guess again this happened in the bouncer's presence?

Mohammed Igram: Yes, but they were not in a position to give me any assistance.

Governor: Did you seek to get a statement from the bouncer?

Mohammed Igram: No, after it happened they escorted both of us out and we went to Caesars' security where the police were.

Governor: When you say they escorted both of us out are you referring to Mr. Mitchell or the bouncer?

Mohammed Igram: Mr. Mitchell.

Governor: Again my question is did seek to get a statement from the bouncer?

Mohammed Igram: No I did not.

Governor: You also said that Mr. Fry who is the manager/owner of the night club is a friend of yours? Is that correct?

Mohammed Igram: Yes he is.

Governor: And you said that you never got video. Did you ask for a copy of the video from him?

Mohammed Igram: I called him and told him what happened. He said let me get back to you I know that we have insurance for this type of thing is what he said. I know that he spoke to his executives I am sure after he and I spoke and they pretty much said that he is going to have to sue us. They were not going to cooperate on my behalf.

Governor: Was there a criminal complaint filed against you in this matter?

Mohammed Igram: The complaint against me was battery and the complaint on Mr. Mitchell was assault I believe. I am not certain; I have a copy of my police report that says battery at the top.

Governor: I understand that part but has there been an outcome with regard to each of those criminal actions?

Mohammed Igram: I went to court on my court date and my case was not on the docket. I went and had my paperwork stamped and whatever they do at the court and just a couple of weeks ago I got a letter from the district attorney saying that they are going to press charges against Mr. Mitchell. So as far as me I have no charges against me at this point.

Governor: Do you have a document that shows that your case has been dismissed?

Mohammed Igram: I got a letter from the district attorney's office that they are going to pursue this. I called them just after the first of the year and they said that they are in the process of with the change of government with you coming in as Governor they are hiring new staff. They told me it was best if I waited a couple of weeks before I contacted them again.

Governor: I am a little confused because fortunately I have nothing to do with a district attorney.

Mohammed Igram: That is what seemed to me the issue, I don't know what is going on there but they are in disarray at this point to contact them in a couple of weeks.

Governor: Do any of the members of the board have any questions for Mr. Igram?

Secretary of State: Mr. Igram the police indicated that they responded and made contacts with you and part of their investigation is based on creditability and believability of the witness. They indicated that you were not cooperative and I think that you already answered that question. But you also refused an ambulance you did not have a proper form of ID, you were intoxicated, you were combative...

Mohammed Igram: That is not true. I was not intoxicated and I made that clear...

Governor: Mr. Igram if you would allow the Secretary of State to finish his question.

Mohammed Igram: I'm sorry.

Secretary of State: You were interruptive, argumentative and angry. Do you dispute any of those?

Mohammed Igram: Yes I do.

Secretary of State: Which part?

Mohammed Igram: I did not have my drivers' license that is correct. I did provide them with all of the information. I was not combative. I was very upset because of the injuries. The guy took a clear shot at me when I wasn't looking and literally knocked me down. I am 200 pounds and the guy knocked me down in one shot. I got right back up sat down and was given a towel from one of the staff for my eye. I was very, very upset. They took that as uncooperative, my apology. They were not there they were sitting in the offices of security for Caesars' Palace. Yes I was angry definitely.

Secretary of State: You already indicated that you were not able to obtain a video surveillance. The Appeals Officer during that hearing asked whether or not you obtained any witness statements and you indicated at that point you had not. I see in our Board packets you have attached are some character statements essentially saying that you are person with good

character. Have you attached or provided any potential witness statements from your friends or people that were there?

Mohammed Igram: The friends that were with me at that time witnessed what MR. Mitchell did prior to striking me, coming up and costing my friend and being verbally combative prior to striking me. Those are also in that packet.

Attorney General: I have a question for the VOCP. Let me ask you this if it is true that this case moves forward as a battery case and Mr. Mitchell is found guilty does Mr. Igram have the ability to come back to the VOCP for his costs based on that finding.

Rebecca Salazar: Typically, No. Although, that is something that we would review. The problem remains though that program policy is the victim has to cooperate with the investigation, and that he can't have done anything to contribute to the injuries. The information that we have from the police is that he did spit on Mr. Mitchell so that would definitely be contributory. If Mr. Mitchell was prosecuted we could re-review it.

Attorney General: If it moves forward all of the questions are answered and it shows in favor of Mr. Igram being not guilty or involved in any way he would have the authority to come back to the VOCP?

Rebecca Salazar: Yes, if the police report was proven to be insufficient or inaccurate.

Attorney General: Ok, Thank you.

Governor: Mr. Igram I thought I saw a reference to you seeking legal counsel. Did you retain counsel for a civil action?

Mohammed Igram: I spoke to an attorney, but I have not attained as of yet.

Governor: Are there any other questions from the Board members? Is there a motion?

Secretary of State: I would move to deny the appeal and uphold the findings of the appeals officer.

Attorney General: I will second the motion. With the understanding that this action is still moving forward and if it is and if there is new information or facts that come to light then he has the ability to go back to the VOCP and file a request to support his medical expenses.

Governor: I do have a question on the motion. So Mr. Igram would not be barred from reapplying with the VOCP if the finding of the court with the information that the Attorney General just described.

Rebecca Salazar: Yes.

Governor: Motion to deny the appeal and uphold the decision of the VOCP and a second with lead to re-file if there is alternative information filed. Is there any discussion on the motion? Hearing none all those in favor of the motion please say aye. The motion passes unanimously. Mr. Igram do you understand the decision of the board?

Mohammed Igram: Yes I do.

Governor: Thank you sir.

Mohammed Igram: Thank you.

***7. LEASE**

One statewide lease was submitted to the Board for review and approval.

Clerk's Recommendation: I recommend approval.

Motion By: Secretary of State Seconded By: Attorney General Vote: 3-0

Comments:

Governor: We move on to agenda item 7 of the agenda.

Clerk: Thank you Governor. We have one statewide lease submitted for the Boards' review and approval and I have no comments on this item.

Governor: Are there any questions from the Board members on item number 7 of the agenda?

Secretary of State: Move for approval of agenda item number 7.

Attorney General: Second the motion.

Governor: There is a motion by the Secretary of State and a second by the Attorney General. Is there any discussion on the motion? Hearing none all those in favor of the motion please say aye. The motion passes unanimously.

***8. CONTRACTS**

Forty-eight independent contracts were submitted to the Board for review and approval.

Clerk's Recommendation: I recommend approval.

Motion By: Secretary of State Seconded By: Attorney General Vote: 3-0

Comments:

Governor: We will move to agenda item 8.

Clerk: Thank you Governor. There are 48 contracts for the Board review and consideration and I have no comments with regards to the contracts.

Governor: Would the Board members like to discuss any of the contracts on the agenda?

Secretary of State: I have a question with regards to contract number 18. I have had the opportunity to meet with a number of people with respect to this contract; the representatives from HP enterprises along with their lobbyists also had a number of discussions with some representatives who represent ACS. They sent a letter that I got a copy of just yesterday January 10th. Did you have an opportunity to review that Mr. Willden?

Mike Willden: Yes I received the letter yesterday afternoon and reviewed it.

Secretary of State: They raised a couple of concerns and I haven't had a chance to get a response from you. I don't want to over simplify, but basically their concerns are related to the procedure and the delay along with the costs. With respect to the delay can you describe for us what the reasons were and why it has resulted in a delay?

Mike Willden: Yes, thank you. The issue in question here is a request for proposal that we issued about a year ago November 09 for a takeover vendor for our Medicaid Management Information System. The vendor that we currently use First Health gave notice to us that they are no longer providing that Medicaid service. So we went out for an RFP to get the new takeover vendor. When we issued that RFP we had four vendors on that process and the bids came in around June. The original timeline for the bid was roughly 30 days for negotiation. We met with staff from the Purchasing Division and the Attorney General's office and the 30 days actually went about 5 months. All I can say is that there were some very complex issues dealing with the requirements. So the negotiations took a lot longer than a normal contract would have. We issued the final award letter in late November to HP Enterprises and that contract negotiation, so you understand the process HP's base bid was about \$140 million dollars for a five year contract, the second place bid was about \$179 million. When I say the basic bid that would include three items for base bid for what we call Health Information Exchange and data warehouse. Once those items were in place we started the negotiation process. Again in the bid questions the RFP responders were asked to propose a solution to the other issues that we had concerns with and after those issues were resolved we awarded HP the contract.

Secretary of State: You touched on some of the concerns that they raised in their letter with respect to cost, but part of what they outline for concerns was the scope of work change, the RFP and the added cost after the negotiation. Can you explain or outline any of the legal aspects of that?

Mike Willden: Yes there was an increase in the base price by about \$30 million I don't believe there was a big change in the scope of work. These are types of things that when you pick a vendor there will be negotiated items. I met extensively since last Friday when I knew this was an issue and over the weekend and all day yesterday with Purchasing and the Attorney General's Office and our Medicaid procurement staff. They assured me that we were not out of line with the negotiated items.

Secretary of State: One of the things that they are asking for in the letter is that the contract be postponed until we had an opportunity to review this further. Do you have the cost of delay for the State or any detriment that the State would incur if we chose to delay the decision today?

Mike Willden: If there is a delay I would hope that it would be a short delay while the questions are answered. I guess some of the cost would be dependable on how long the delay is and what tools you decide to use. If it is something like our Surveillance Utilization Review negotiated item was eventually decided not to be an awardable item then there are savings that are budgeted into the Executive Budget that will be questioned. Or we may not have the ability to save that amount of money. If it is a short delay I don't see it being a problem but if it is a long delay I can see it being a problem.

Secretary of State: What is your recommendation? Are you recommending the Board approve this today or will you benefit from having a little additional time to answer some of the questions?

Mike Willden: Board members what I can say is after spending the last three day almost full time on this I am comfortable with it. I met with three different Attorney General's and our staff and I think the due diligence is done.

Secretary of State: How confident at the end of the day about the contract and its services.

Mike Willden: I am confident and obviously that is always a risk when you get contract of this size and of this scope that there is risk.

Attorney General: Were any official protests filed during the RFP process?

Mike Willden: The short answer is no. NRS 333.370 allows a person who makes an unsuccessful bid or proposal may file a notice of appeal with the Purchasing Division and with the Hearings Division of the Department of Administration within 10 days after: (a) The date of award as entered on the bid record.

Governor: Are there any other questions? That was my question Mr. Willden I have the NRS 333.370 in front of me and it says a person who makes an unsuccessful bid or proposal may file a notice of appeal with the Purchasing Division and with the Hearings Division of the Department of Administration within 10 days after: (a) The date of award as entered on the bid record. So the unsuccessful bidder did not exercise its rights according to NRS 333.370?

Mike Willden: That is correct.

Governor: Are you aware of any explanation as to why those rights weren't exercised?

Mike Willden: Yes I am, from conversation that I have had in the past couple of days there is a cost to that to file a bond. The bond would cost around \$40 million plus and I have been told to

procure that type it would cost three quarters of a million dollars and the unsuccessful bidder did not wish to pay that type of expenditure to proceed.

Governor: That would have been face value of the bond do you understand what the cost of the bond would be?

Mike Willden: I am told it would be roughly \$250,000 to get a \$40 million dollar bond.

Governor: I would like a better understanding because what is in jeopardy of not making an appeal pursuant to this statute?

Kimberlee Tarter: The question with respect to the bond that is required in the event for a vendor to protest is to serve as two purposes; 1. Is to insure that the State is not wired down with frivolous protests it also insures that if the State has any damages it has the ability to recover the costs of those damages. So if it goes to hearings for the Administrative Hearings Office so we have the opportunity to capture the cost for those hearings because they are not in our budget. It gives the State the ability to recover those costs should the hearings officer find for the State during the administrative process. In the event that the hearings officer does not find for the State and finds for the appellant in those situations the only relief that is available is for the Purchasing Division to cancel the procurement and go forward with a re-procurement for that service. In that situation they do refund the bond to the appellant.

Governor: Is there a mechanism in the absence of appeal to go the re-procure process?

Kimberlee Tarter: I would have to say yes. So during the protest period that 10 day window the vendor contacts the Purchasing Division and is able to demonstrate that they believe an error has occurred. For instance they were reviewing the score sheets and they were analyzing the math and they come back and say there is an adequate error under calculations that would change the outcome. Then at that time we do have to go in and cancel the procurement to not go forward before the final protest and then we would have to move forward with the re-procurement. In this instance there was communications with the Chief of the Purchasing Division and ACS and they were not able to provide any information that would indicate to us that there was an error in the procurement process because they did what concerns the Chief of Purchasing did in fact go back meet with staff reviewed the files asked questions. We were very comfortable with the process that it was complying with NRS 333.370 with no errors and our next move was to move forward. Our recommendation was to move forward had the vendor had these concerns it should have been addressed during the protest period. They chose not to protest until after the fact going outside of NRS 333. Therefore it was our recommendation to move forward.

Governor: The statute also provides that a person who makes an unsuccessful bid may not seek any type of judicial intervention until the hearing officer has made a determination on the appeal. So in your experience that if they unsuccessful bidder does not take advantage of the appeal process according to NRS 333.370 they don't have the ability to file a law suit?

Kimberlee Tarter: That is my understanding.

Governor: And if they have appealed and there was a mechanism and they were successful than this would have been redone, correct?

Kimberlee Tarter: Yes that is correct. If the hearings officer reviewed the file and found an error than absolutely we would cancel the contract.

Governor: And their bond would have been refunded?

Kimberlee Tarter: That is correct.

Governor: Are there any further questions?

Secretary of State: I am open to a Special Board of Examiners meeting should you need more time but I am also ready to move forward today.

Governor: I just don't know if we were to review this more where it would get us. If we are bound by NRS 333.370 that would then conform those concerns that the unsuccessful bidder chose not to administer his public rights according to NRS 333.370. So would this even have standing to change any provisions of that contract of the concerns from ACS?

Kimberlee Tarter: With respect to that question I would have to defer to council on that item.

Katie Armstrong: Thank you Governor, It appears that the Board cannot do anything.

Governor: In other words if an unsuccessful applicant chooses not to exercise their appellant rights according to NRS 333.370 than they waive those claims?

Katie Armstrong: I believe that is correct Governor.

Attorney General: Just to follow up. I also received the letter and I spoke with my staff regarding the concerns of the contract and whether or not it needed to be pulled. We didn't see anything unusual in this process. However, if you would like to withhold this contract I understand, but there is not much more we can do with it.

Governor: Just so that I am clear, if we were to defer this it would cost the state millions of dollars?

Mike Willden: Governor, a couple of things. Millions is probably accurate. We have federal Medicaid mandates which are called Fifty Ten. We have deadlines to meet and if we miss those deadlines it could cost us \$2.7 million dollars annually. If there is a minor delay I think that we would be ok.

Governor: Does the State have any ability to recoup any of those dollars?

Mike Willden: I don't think so because we have a bond.

Governor: That is why we have NRS 333.370.

Mike Willden: That is correct.

Governor: Are there any further questions from the Board? I don't know if we have a representative from the unsuccessful bidder here?

Josh Hicks: I wasn't planning on making any kind of statement just here to observe the day. I would be happy to answer any questions. I will put on the record there was discussion on the cost to appeal and my client told me that it would have been a significant cost \$245,000 to post the required bond and that is something that you are not able to recover. It is a very expensive filing fee to appeal the case.

Governor: So your client made the choice not to exercise his appellant rights according to NRS 333.370.

Josh Hicks: That is correct, due to the cost.

Governor: Do any of the other board members have any questions for Mr. Hicks? Thank you. Are there any further with regards to contract 18? The chair will accept a motion. Before we enter into a motion I have a question on contract number 16 for the Department of Education. This contract seeks to increase the amount of the current contract by \$250,000. My question is this under the justifications it says the current data collection methods for acquiring these federally required data are inefficient and result in data that does not meet desired levels of validity and reliability. Why are we adding money to a system that appears not to be working?

Jane Splean: What happens is requirements change and we have to add enhancements to the current contract. So as the requirements change it requires us to make changes to the system.

Governor: I guess the point I am making is the summary gives the impression that the system that you have now isn't working well so what we have now is meeting its original objective and what we are asking now is due to additional requirements?

Jane Splean: That is correct. This program started in 2008 and is quite a lengthy process that requires us to build a system that adds in all of our reporting requirements under federal law. So as the requirements change we need to make changes to our system.

Governor: Why does it cost more money?

Jane Splean: It is the changes that are put forth by the contractor in order for them to make the adjustments and changes to the system. And these are all federal funds that come to us.

Governor: These are federal funds, not state funds?

Jane Splean: These are all federal funds.

Governor: Thank you. Are there any other questions? Are there any other items within agenda item 8 that any of the Board members would like to discuss?

Secretary of State: Move for approval of contracts 1-48.

Attorney General: I will second the motion.

Governor: There was a motion by the Secretary of State to approve contracts 1-48 and second by the Attorney General. Is there any discussion on the motion?

Secretary of State: I have one disclosure to make regarding contract 46. The contractor is The Tiberti Company, Tito Tiberti is one of the principals of that company and he is my God Father.

Governor: All those in favor of the motion please say aye. The motion passes unanimously.

***9. MASTER SERVICE AGREEMENT**

One master service agreement was submitted to the Board for review and approval.

Clerk's Recommendation: I recommend approval.

Motion By: Attorney General

Seconded By: Secretary of State

Vote: 3-0

Comments:

Governor: Item 9 on the agenda Master Service Agreement.

Clerk: Item 9 on the agenda is a master service agreement for Laboratory Corporation of America. This is an amendment to the original contract that was approved by me per the Board through the emergency provisions in statute. The contract before the board today is an amendment to that contract in the amount of \$975,001 for a total of \$1 million dollars. This is consistent with the original contract that this contract replaced. The original contractor was Quest Diagnostic which was also for a \$1 million dollars.

Governor: Are there any questions for the Clerk?

Attorney General: Move for approval.

Secretary of State: Second.

Governor: Attorney General has moved for approval and the Secretary of State has second. Is there any discussion on the motion? Hearing none all those in favor signify by saying aye. The motion passes unanimously.

10. INFORMATION ITEMS

Governor: Item 10 Information Items.

Clerk: Governor, we have no information items.

11. BOARD MEMBERS' COMMENTS/PUBLIC COMMENT

Governor: Item 11 Board member comments? Are there any Public comments? The chair would accept a motion to adjourn.

***12. ADJOURNMENT**

Motion By: Attorney General

Seconded By: Secretary of State

Vote: 3-0

Comments:

Respectfully submitted,

ANDREW K. CLINGER, CLERK

APPROVED:

GOVERNOR BRIAN SANDOVAL, CHAIRMAN

ATTORNEY GENERAL CATHERINE CORTEZ MASTO

SECRETARY OF STATE ROSS MILLER